Sir *Thomas Skipwith*, Heir and Executor of Mr. Serjeant *Skipwith*, ---- ---- } Appellant. | *Thomas Sturmy*, Esq; Executor of Dame *Elizabeth Skipwith*, } Respondent.

The Respondent's CASE.

DAme *Elizabeth Skipwith*, being formerly the Widow of Mr. *Maddison*, and possessed of a very considerable Estate, a Treaty of Marriage was set on foot between her and Serjeant *Skipwith*.

29th *April*, 1673. She, by the Serjeant's consent and privity, Assigns her Estate in Trust for her self, and such Husband as she should Marry, and to the Survivor of them; and thereupon the Marriage took effect between her and the Serjeant: And she being possessed of Bonds taken in the name of her former Husband, from Mr. *Whitehall* the Goldsmith, for about 6000 *l.* Debt, the Serjeant deliver'd them up, and took a new Bond from *Whitehall* to himself and his Wife for the same.

July 1674.

30th *April*, 1677. The Crown granted to *Whitehall* (being one of the Bankers) 14931 *l.* 19 *s.* 4 *d.* *per Annum*, out of the Hereditary Excise, in Trust for such Creditors as would accept the same.

Afterwards the Serjeant having receiv'd from *Whitehall* 172 *l.* 17 *s.* in money, delivers up the said Bond to *Whitehall*, and takes a Grant from *Whitehall* of 400 *l.* *per Annum*, to him and his Heirs, in discharge of the rest of the Debt, being 6666 *l.* 15 *s.*

But the Serjeant having taken the Grant in his own Name, yet intending it for the benefit of his Wife, according to the former Agreement.

24th *Decemb.* 1677. The Serjeant by Deed grants this 400 *l.* *per Annum* to the use of himself and his Wife, and the Survivor of them, and after their decease, to the right Heirs of the Survivor.

Afterwards Serjeant *Skipwith* dyed, and his Wife survived him, and made the Respondent her Executor, and dyed.

This Grant from the Crown to *Whitehall*, and by *Whitehall* to Serjeant *Skipwith*, being only a Security for Money, and Redeemable by the Crown, both upon the Letters Patents, and since by Act of Parliament, *it is humbly conceived*, was and is in the nature of a Personal Estate, and a Trust for the Executors, and belongs to the Respondent, as Executor to the Lady *Skipwith*, who survived the Serjeant.

The Appellant by surprise having got a Debenture, as Heir and Executor to his Father, for payment of the said Annuity, without taking any notice of his Fathers said Deed of Grant.

24th *January*, 1705. Thereupon the Respondent exhibited his Bill in the *Exchequer*, to be relieved against the same, and to have the Debenture assigned and delivered to him, as Executor to the Lady *Skipwith*; and obtained a Decree by the opinion of the whole Court accordingly. From which Decree Sir *Thomas Skipwith* hath Appealed, and in his Appeal insists, *that the Serjeant did, after the Grant of the said Annuity so by him made, in consideration thereof, settle near* 600 l. per Annum *on his Wife for a Joynture, and had been kind to her, and looked upon the said Annuity as his own, and that neither the Lady, nor Respondent, had made nor entered their Claim thereto, as by Law required; and that the Respondent is only Executor, and no Relation in Blood; and that by the Serjeants Deed it is limited to the Heirs of the Survivor; and that one Mr.* Rea *was Heir at Law to the Lady* Skipwith, *and had Assigned the same to the Appellant; that therefore a Court of Equity could not Decree it for the Respondent.*

In answer to which, the Respondent humbly Insists, *That there is not one word of Proof of the Appellant's pretences, that the Lady* Skipwith *ever had any satisfaction made her for the said Annuity, or ever agreed to quit her Interest therein, or accepted any thing in lieu thereof, or ever was Party to any Deed for that purpose, but on the contrary, after her Husbands death, always esteemed it as her own.*

And as to the Appellant's other pretence, *that it belongs to the Heir, and not to the Executor of the Lady* Skipwith, the same is contrary to the known and constant Experience of *Westminster-Hall*, both in Cases upon the Bankers Patents, and other like Cases: That the same being only a Security for Money, and a Redeemable Estate, does belong to the Executor: It came to the Bankers as Money, and is still a Mortgage. The Grant from the Crown was to secure a Sum of Money, and in Trust for *Whitehall*'s Creditors, and if it were a Personal Estate in *Whitehall*, it must be so in Serjeant *Skipwith*; and that the Heir is only a Trustee for the Executor. Wherefore it is conceived to be a hard Case, for the Appellant to complain against his Fathers own Deed, of an Annuity (now by Act of Parliament reduced to 200 *l.* *per Annum*) purchased with the Ladies own Money, who was a great Fortune to Serjeant *Skipwith*, never had any Jointure agreeable to her Fortune, and the Jointure she had was not enjoyed by her above three years.

The Respondent upon the whole Case, humbly hopes, Your Lordships will be pleased to Affirm the Decree, and Dismiss the Appeal with Costs.

SAM. DODD.

THE

CASE

OF

Thomas Sturmy, Esq; Respondent.

TO

Sir, *Thomas Skipwith*, Appellant.

to be heard of *Feb:* 170½.

Tuesday 26th Feb: